

BUREAU OF INDIAN EDUCATION (BIE)
ALBUQUERQUE SERVICE CENTER (ASC)

**DISPUTE RESOLUTION
IN SPECIAL EDUCATION
THROUGH MEDIATION
(CFR 300.506)**

**PARENT/SCHOOL PROCEDURES AND
MEDIATOR'S MANUAL**



*Individuals with Disabilities Education Act, IDEA of 2004
Revised 2009*

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OVERVIEW

Parents and school staff usually agree upon issues regarding evaluation, eligibility, program, and placement of students with disabilities. However, there are times when disagreement occurs.

Disagreements and conflict are often inevitable, but they need not produce negative results. If the parent and school are unable to resolve a conflict concerning a student with a disability, then mediation is an available alternative to a long and expensive due process hearing.

Conflict is often inevitable, but it need not produce negative results.

The mediator is a neutral third party and, therefore, has no power to make a decision regarding the dispute. He or she will listen to the views of each party and will assist in developing an acceptable solution to the problem. The mediator has been trained in a communication process to handle special education disputes.

Mediation is completely voluntary. It should not interfere with any procedural safeguards, including a request for a due process hearing.

Mediation is completely voluntary

Center, 1011 Indian School Road, Suite 332, P.O. Box 1088, Albuquerque, NM 87103-1088. (505) 563-5281/5282 (fax). www.oiep.bia.edu

If you have any questions after reviewing these materials, please do not hesitate to contact the school principal or the Bureau of Indian Education, Albuquerque Service

MEDIATION IN SPECIAL EDUCATION

Mediation in special education is a process to assist parents and schools in resolving disagreements regarding the education program of a student with disabilities.

A trained mediator works with both parties to guide them toward a mutually satisfactory solution.

A trained mediator works with both parties to guide them toward a mutually satisfactory solution in the best interest of the student. This occurs at a non-adversative meeting that is more structured than a parent-school conference but less formal than a due process hearing.

Mediation is a **voluntary** process. It is **optional** for both parties. The mediation session is completely confidential and encourages open communication.

ADVANTAGES OF MEDIATION

The purpose of mediation is to provide an **optional alternative** to a due process hearing and provide a means to resolve disagreements between parents and school personnel. In virtually all cases, mediation is less costly and adversative than a due process hearing and is completely voluntary for both parties.

Mediation helps both parties let go of the past and focus on what is best for the student in the future.

Mediation can do the following:

- Identify disagreements concerning the identification, evaluation, or educational placement of a student.
- Clarify the issues causing the disagreement.
- Provide those involved with uninterrupted opportunities to present their points of view.
- Stimulate mutual problem-solving efforts.
- Promote positive working relationships between parents and school personnel.
- Help parents and school personnel focus on what they have in common—the student—rather than on the issues that divide them.

Mediation helps both parties let go of the past and focus on what is best for the student in the future.

THE COST OF MEDIATION

Mediation can take place at no cost to the parents. The BIE/ASC and/ or school pay the costs related to mediation. Section 504 mediation will be a school expense. However, parties who choose to involve their attorneys are responsible for their own attorney fees. Any incidental costs are the school's responsibility.

The ultimate responsibility for the administration of the mediation process is with the BIE/ASC. The BIE/ASC will ensure that mediators throughout the Bureau system are trained on effective mediation strategies.

REQUESTING MEDIATION

A request for mediation may occur when parents and schools reach an impasse after having made

Mediation can be requested by the parents or school.

good faith efforts to resolve their differences. A request for mediation will most likely occur when parties are unable to modify their positions without outside assistance. Mediation can be requested by the parents or school.

Mediation may occur on any issue considered appropriate for a due process hearing or complaint investigation. Mediation may occur prior to or concurrent with a request for a due process hearing or filing of a complaint. However, it may not, **in any way, interfere with the right to a due process hearing.** Mediation is not a necessary step prior to a due process hearing. It is an optional alternative to a due process hearing.

AGREEING TO MEDIATION

Mediation is voluntary for both parties. Unless both parties agree to mediation as a way to resolve their disagreement, a mediation session cannot be scheduled. Once the parents and school agree to mediation, the school and parents complete the mediation agreement request form (pages 9 and 10) and send it to the BIE/ASC.

APPOINTMENT OF A MEDIATOR

The BIE/ASC maintains a list of trained mediators. The BIE/ASC appoints a neutral mediator from that list who carries out all of the mediation activities.

THE MEDIATION PROCESS

Once appointed, the mediator will set the date, time, and location for the session and determine who will participate in the session. At that time, the mediator will answer any questions about the process and may request additional information from both parties.

MEDIATORS

Individuals selected to serve as mediators have successfully completed a training program in mediation with additional training in special education issues. In addition to the initial training, mediators will participate in regularly scheduled inservice sessions to ensure updating of appropriate information and skills.

Mediators are selected on the basis of these qualifications:

- Neutrality, both real and perceived
- Knowledge of special education and the needs of students
- Knowledge of the process of mediation
- Appropriate personal communication skills

THE ROLE OF THE MEDIATOR

The mediator is a **neutral** third party acting as a **facilitator** to assist parents and school personnel in reaching an agreement.

Although the **mediator is in control of the session**, he/she does not make the decision on how to resolve the issue(s). The mediator allows parties to present their positions and attempts to achieve mutual understanding and a solution to the problem in the best interests of the student.

The mediator allows parties to present their positions and attempts to achieve mutual understanding and a solution to the problem in the best interests of the student.

The mediator facilitates the process. He or she summarizes positions and helps the parties consider possible alternatives.

THE ROLE OF PARENTS AND THE SCHOOL

The parties are expected to approach the mediation in good faith and with the intention of reaching an agreement. They will be active participants in the session and, if mediation is successful, will develop an agreement with the assistance of the mediator.

THE ROLE OF LEGAL COUNSEL

The parties understand that mediation is not a substitute for independent legal advice. The parties may secure independent legal advice throughout the mediation process. The parties are responsible for their own legal fees.

PREPARING FOR A MEDIATION SESSION

- Make no other plans for the day or evening of the mediation.
- Review all relevant documents, papers, and reports prior to the session.
- Organize your information and any materials before the mediation session.
- Think of possible alternatives/ways of solving the problem.
- Think about what you want to get out of the session.
- Think about what you want the other party to do.
- Think about what you are willing to do.
- Be willing to listen and compromise.
- Put aside personality conflicts and focus on the student's best interest.

PARTICIPANTS IN THE MEDIATION SESSION

The number of participants at each mediation session will be kept to an absolute minimum in order to enhance the potential for effective problem solving.

At the session, the parties to the dispute—the parent(s) and the school's representative(s)—must have the authority to make decisions and to commit any resources agreed upon as the result of the mediation.

The mediator makes the final decision on who will attend the mediation session.

THE LENGTH OF MEDIATION

Mediation sessions could take up to a full day. Generally, however, sessions can be completed in three to four hours depending upon the complexity of the issue(s). It is recommended that participants plan to set aside a full day even though the session is likely to conclude in a shorter period of time.

THE MEDIATION SESSION

The mediation session consists of several phases:

- 1. INTRODUCTION**—The mediator begins the session promptly and explains the mediation process and the ground rules of the session to all participants.
- 2. JOINT SESSION**—Both parties in the dispute are given an opportunity to present the issue(s) from their point of view **without interruption**. Only the mediator may ask questions or summarize what has been said.
- 3. CAUCUS**—The mediator may use the caucus, which is an opportunity for each party to meet privately with the mediator to further clarify issues and positions. The mediator will not share information from the caucus without consent.
- 4. AGREEMENT**—When the parties reach an agreement, the mediator assists in explaining solutions to the problem. The parties determine the terms of the agreement, and the mediator puts the agreement in writing. The mediation agreement is signed by both parties and the mediator. At the conclusion of the session, each party receives a copy. If a mediation session results in an agreement that would require changes to a student's IEP, an IEP committee should be convened as soon as possible to consider the incorporation of elements of the agreement into the student's IEP.

Not all mediation sessions result in agreements. If an agreement is not reached, the mediator will certify to the parties and the BIE/ASC, in writing, that the mediation has been unsuccessful.

The discussion during the mediation session is completely **confidential**, and there will be **no disclosure of any information given by either party**. At the conclusion of the session, and in the presence of the parties, the mediator may destroy any notes he/she has taken during the session. The only part of the mediation session that may be shared with other persons is the written agreement.

The discussion during the mediation session is completely confidential, and there will be no disclosure of any information given by either party.

The mediator will be excluded from participation in subsequent proceedings—staffings, complaint investigations, and due process hearings. **Nothing occurring at a mediation session is admissible as evidence in a due process hearing.** The written agreement may be admissible in subsequent proceedings.

No electronic recording of mediation sessions will be allowed, and no records of the proceedings will be kept other than written agreements in successful mediations.

CONCLUSION

The purpose of mediation in special education is to provide an alternative to a due process hearing or complaint procedure investigation as a way to resolve conflicts, clarify issues, and stimulate mutual problem-solving efforts between parents and school personnel. Even if an agreement is not reached, there is the potential of both parties leaving the session with an enhanced perspective of the issues and with the focus on the student. Most mediations result in better communication between the school and parents. This leads to an improved situation for the student.

Bureau of Indian Education (BIE) Albuquerque Service Center (ASC)

DISCLOSURE AND STANDARDS OF MEDIATION

Mediation is a conflict resolution process in which an impartial third party facilitates participants' negotiating of a voluntary agreement. In mediation, decision-making authority rests at all times with the parties. These standards are intended to assist and guide special education mediation in school throughout the BIE/ASC.

Mediators have duties to the parties, to their profession, and to themselves. They should be honest and unbiased, act in good faith, be diligent, and never seek to advance their own interests at the expense of the parties.

Mediators must act fairly in dealing with mediation participants, have no personal interest in the terms of any settlement agreement, have no bias toward any individual or institution involved in mediation, be reasonably available as requested by mediating parties, and be certain that the parties are informed about the mediation process in which they are involved.

Impartiality

The mediator must maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias either by work or by action and a commitment to serve all mediation participants as opposed to a single party. The mediator should disclose to the participants any affiliations that the mediator may have with any participant and obtain all parties' consent to proceed as mediator.

Informed Consent

Each party's consent to proceed with mediation should be obtained early, prior to the beginning of substantive negotiations.

Confidentiality

Maintaining confidentiality is critical to the integrity of the mediation process. Confidentiality encourages candor, a full exploration of the issues, and the possibilities of settlement. The mediator should resist testifying and disclosing other information about the substance of a mediation at any proceeding without the consent of all mediating parties.

Suspension or Termination of Mediation

The mediator shall inform the participants of their rights to withdraw from mediation at any time and for any reason, except as is required by law. If the parties reach a final impasse, the mediator should not prolong unproductive discussions that result in emotional and monetary costs to the participants.

Comparison to Other Processes

The mediator shall explain that mediation is not arbitration, legal representation, or therapy and that the mediator will not decide any issues for the parties.

Independent Advice and Information

The parties understand that mediation is an agreement-reaching process in which the mediator assists parties to reach agreement in a collaborative and informed manner. It is understood that the mediator has no power to decide disputed issues for the parties. The parties understand that mediation is not a substitute for independent legal advice. The parties are encouraged to secure such advice throughout the mediation process and are strongly advised to obtain independent legal review of any formal mediated agreement before signing that agreement. The parties understand that the mediator has an obligation to work on behalf of all parties and that the mediator cannot render individual legal advice to any party and will not render therapy or arbitrate within the mediation.

Opportunity for Full Expression of Interests

The mediator shall seek to provide each mediation participant with a full opportunity to effectively express his or her interests.

A mediator shall participate in continuing training provided by the BIE/ASC. A mediator is encouraged to join with other mediators and members of related professions to promote mutual professional development.

Sample Forms on Following Pages

PARENT AGREEMENT TO MEDIATE

I, _____,

have read and understood the written materials describing mediation services and have been fully informed that the mediator is not providing the parent(s), the school, or the child with legal representation. I also understand that the mediator is not providing counseling or therapy services.

I am choosing to pursue mediation to try to reach an agreement on some or all of the issues regarding my child's special education program. I understand that the mediation process will involve the mediator's speaking privately to the parent(s) and the school representative(s). I understand that the mediator(s), acting as a neutral third party, will work with each of us to develop an agreement that is mutually satisfactory.

If an agreement is reached, I understand that the signed agreement will be shared with other individuals working with my child. I understand that discussions during the mediation session will be confidential and will not be used during subsequent proceedings. I, therefore, agree not to call the mediator(s) as a witness in any future proceedings pertaining to the child's case.

The following is a summary of the issue(s) I would like discussed at the mediation with the school: _____

I have received a copy of my parental rights in special education.

Parents _____

Address _____

Telephone # _____ Child's name _____ DOB _____

School _____ Agency _____

Parent(s) signature(s) _____ Date _____

—Send to School —

SCHOOL AGREEMENT TO MEDIATE AND REQUEST FOR MEDIATION

I, _____, representing _____ school, request mediation in the matter of _____ (student's initials) to try to reach an agreement on some or all of the issues regarding educational services for the student. I understand that the mediation process will involve the mediator speaking privately to the parent(s) and the school representative(s). I understand the mediator, acting as a neutral third party, will work with each of the parties to develop an agreement that is mutually satisfactory.

If an agreement is reached, I understand that the signed agreement will be shared with other individuals working with the student. I understand that discussions during the mediation session will be confidential and will not be used during subsequent proceedings. I, therefore, agree not to call the mediator as a witness in any future proceedings pertaining to the student's case.

The following is a summary of the issue(s) we would like discussed at the mediation with _____ (name of parents): _____

A copy of the parents' agreement to mediate is attached to this request. The parents have received a copy of the brochure "*Parental Rights in Special Education*" and have been informed of their right to a due process hearing.

School representative _____

Parents _____

Address _____

Telephone# _____ Student _____ DOB _____

School _____ Agency _____

Representative signature _____ Date _____

—Send to the BIE/ASC—

MEDIATION AGREEMENT

STUDENT _____ Initials _____ DOB _____

Date of mediation _____ Mediator _____

Place of mediation _____

School _____ Agency _____

ISSUE(S) _____

PARTIES—Each of you understands the preference for a limited number of participants at the meeting. At this time, the only participants who will be allowed into the session, without prior consent, will be as follows:

Parent/Guardian _____

School representative _____

Other participants (please include relationship to student)

TERMS OF AGREEMENT (use additional pages if necessary)—The parties understand that mediation is an agreement-reaching process in which the mediator assists parties to reach agreement in a collaborative and informed manner. It is understood that the mediator has no power to decide disputed issues for the parties. The parties understand that mediation is not a substitute for independent legal advice. The parties may secure such advice throughout the mediation process. The parties understand that the mediator has an obligation to work on behalf of all parties and that the mediator cannot render individual legal advice to any party and will not render therapy or arbitrate within the mediation.

MEDIATION AGREEMENT (CONTINUED)

The school and parents agree to the following:

Issue 1: _____

Resolution: _____

Issue 2: _____

Resolution: _____

Issue 3: _____

Resolution: _____

Issue 4: _____

Resolution: _____

Neither the mediator nor the mediator's records or notes will be available for further procedures such as a due process hearing. Any agreement reached will be reduced to writing and duplicate originals given to the parents and the school.

We have participated in this mediation session and agree with the agreement. We will work in good faith to ensure the agreement is implemented.

SIGNATURES:

Parent/guardian _____ Date _____

School representative _____ Date _____

Mediator _____ Date _____

LETTER TO ATTORNEY

Dear _____,

As I believe you know, I will be working with _____ and _____ as mediator. My understanding is that you will be serving as _____'s individual legal counsel. I look forward to your assistance and to working cooperatively with you. As _____'s individual counsel, I will be counting on you for the following:

- To be sure that all issues the parent(s) would like considered in the mediation are addressed
- To ensure that the parent(s) are acting with full desired information and documentation
- To ensure that parent(s) receives all desired individual legal advice and information
- To suggest specific settlement options on disputed issues

I want to encourage you to meet with _____ early in the mediation process, when we develop a comprehensive draft mediation agreement and, of course, prior to signing any final settlement.

Thank you for your time and cooperation. Please call me with any questions, concerns, or suggestions.

Sincerely,

cc: Clients
BIE/ASC

PARENT EVALUATION FORM

1. Parent _____

Address _____ Telephone _____

2. Summary of issue(s) mediated _____

3. How did you find out about mediation? _____

4. What made you decide to try mediation? _____

5. Was the mediation successful? Yes _____ No _____

6. What was the most positive aspect of the session? _____

The most negative? _____

7. How would you have improved the session? _____

8. How would you rate the mediator? Good _____ Average _____ Outstanding _____

9. Did you reach an agreement at the session? Yes _____ No _____

If so, how helpful was the mediator in assisting you in reaching the agreement? _____

10. Did you consult an attorney before, during, or after the mediation process?

Yes _____ No _____

11. Do you feel that the mediator sufficiently explained the mediation process?

Yes _____ No _____

12. Had you requested a due process hearing prior to the mediation session?

Yes _____ No _____ If so, is the hearing still scheduled? _____

13. Do you feel the mediation process has improved communication with the school?

Yes _____ No _____

14. Would you recommend the process to other individuals involved in special education disputes? Yes _____ No _____

Thank you for completing this form. Please mail to:

Special Education Director, The Bureau of Indian Education, Albuquerque Service Center,
1011 Indian School Road, Suite 332, P.O. Box 1088, Albuquerque, NM 87103-1088.

SCHOOL EVALUATION FORM

1. Parent _____
Address _____ Telephone _____

2. Summary of issue(s) mediated _____

3. How did you find out about mediation? _____

4.

What made you decide to try mediation? _____

5. Was the mediation successful? Yes _____ No _____

6. What was the most positive aspect of the session? _____

The most negative? _____

7. How would you have improved the session? _____

8. How would you rate the mediator? Good _____ Average _____ Outstanding _____

9. Did you reach an agreement at the session? Yes _____ No _____

If so, how helpful was the mediator in assisting you in reaching the agreement? _____

10. Did you consult an attorney before, during, or after the mediation process?

Yes _____ No _____

11. Do you feel that the mediator sufficiently explained the mediation process?

Yes _____ No _____

12. Had the school requested a due process hearing prior to the mediation session?

Yes _____ No _____ If so, is the hearing still scheduled? _____

13. Do you feel the mediation process has improved communication with the parents?

Yes _____ No _____

14. Would you recommend the process to other schools involved in special education disputes? Yes _____ No _____

Thank you for completing this form. Please mail to:

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1011 Indian School Road, Suite 332, P.O. Box 1088,
Albuquerque, NM 87103-1088.

MEDIATOR EVALUATION FORM

1. Name _____ Telephone _____
Address _____
2. Summary of issue(s) mediated _____
3. How would you rate the success of the session?
Unsuccessful _____ Successful _____ Very Successful _____
4. What was the most positive aspect of the session? _____

The most negative? _____
5. How would you have improved the session? _____
6. How much time did you spend preparing for the session? _____
7. What was the most difficult aspect of conducting the session? _____
8. Would you be willing to facilitate other mediation sessions? Yes _____ No _____
9. If an agreement was not reached, what do you perceive was the major obstacle to resolving the dispute? _____
10. In your opinion, would mediation have been more helpful to the parties at some other stage of the dispute? Please explain. _____
11. What types of follow-up inservice training would be helpful to you as a mediator? _____

PLEASE ATTACH A COPY OF THE AGREEMENT THAT WAS REACHED.

Thank you for completing this form. Please mail to:

Special Education Director, the Bureau of Indian Education, Albuquerque Service Center,
1011 Indian School Road, Suite 332, P.O. Box 1088,
Albuquerque, NM 87103-1088.

MEDIATION IDEA REGULATIONS

Sec. 300.506 Mediation.

(a) General. Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

(b) Requirements. The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process—

(i) Is voluntary on the part of the parties;

(ii) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and

(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2) A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party—

(i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and

(ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

(3)

(i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(ii) The SEA must select mediators on a random, rotational, or other impartial basis.

(4) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.

(5) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that—

(i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.

(7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.

(c) Impartiality of mediator.

(1) An individual who serves as a mediator under this part—

(i) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and

(ii) Must not have a personal or professional interest that conflicts with the person's objectivity.

(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under Sec. 300.228 solely because he or she is paid by the agency to serve as a mediator.

(Authority: 20 U.S.C. 1415(e))

For further information on the special education mediation process call:

Your school's
special education coordinator
or the
U.S. Department of the Interior
Bureau of Indian Education
Albuquerque Service Center
1011 Indian School Road, Suite 332
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